

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

In the Matter of:)
) Chapter 7
DANIEL L. O' STEEN, III)
SUSAN O' STEEN,)
)
Debtors) Case No. 99-50838-JDW
)
AGRIBANK, FCB,)
)
Plaintiff)
)
vs.) Adversary Proceeding
) No. 99-5035-JDW
)
DANIEL L. O' STEEN, III,)
)
Defendant)

ORDER

Defendant has filed a Motion For An Order Pursuant To Bankruptcy Rule 7014 To Allow The Defendant and Debtor, Daniel L. O' Steen, III to Bring A Third Party Action In The Above-Styled Case Against Helena Chemical Co. For Indemnity. An order was entered on October 13, 2000, authorizing the filing of such an amendment subject to the right of Plaintiff to request a hearing. A hearing was requested by the Plaintiff and conducted by the Court on October 25, 2000.

The motion will be denied. The Court's explanation for the denial of the motion was stated in open Court at the conclusion of the hearing. In short, it appeared to the Court

that the Defendant could not articulate a cause of action against the proposed third party defendant for a claim related to the Plaintiff's Section 523 objection to discharge. It appeared to the Court that the matter of the exception to discharge of the debt owing by Defendant to Plaintiff could not, as a matter of law, be the result of the action or conduct of a separate party such as the proposed third party defendant, Helena Chemical Co. For that reason, as to the matter of the objection to discharge, the Defendant's request to add Helena Chemical Co. as a third party defendant will be denied.

The Court concluded further that, as to the underlying liability between Defendant and Plaintiff, which liability would be premised on a state law cause of action, there might be some theory, yet unknown to the Court and not apparent from the facts recited by the parties, which would establish a claim of liability as between Defendant and Helena Chemical Co. that could properly serve as the basis for adding Helena Chemical Co. as a third party complaint. Because this case is ready to go to trial on the issue of dischargeability, and because the issue of dischargeability can be determined separate from the issue of the underlying liability, trial of the case will be bifurcated so as to consider first the matter of the discharge objection, and, thereafter, if it is determined that the Defendant is to be denied a discharge as

to his obligation to the Plaintiff, the Court will then and there consider further the Defendant's motion as to adding the third party defendant, Helena Chemical Co., and, if such motion is to be denied, the trial will proceed then and there to conclusion. If the motion is to be granted, the trial would be adjourned and the matter of the amendments as to the third party complaint and the pleading and discovery associated with that matter would proceed in a manner and for a duration as to be later determined by the Court.

Now, therefore it is hereby

ORDERED that the Defendant's motion to add third party defendant be and it hereby is DENIED without prejudice as to Defendant's right to renew the motion at the conclusion of the first phase of the trial related to the question of Section 523 dischargeability.

SO ORDERED this ____ day of October, 2000.

Honorable James D. Walker, Jr.
United States Bankruptcy Court